TRAGEDIES IN NEW YORK'S PUBLIC RECORDS

BY

VICTOR HUGO PALTSITS

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TRAGEDIES IN NEW YORK'S PUBLIC RECORDS.

By Victor Hugo Paltsits, *State Historian of New York.*

We do not design to give in this paper a complete list of the dramatis personæ in the tragedy of New York's public records; nor can we trace every assassination of these records to its source. Anything like elaboration would need volumes for a history of the losses and neglect of the records of this State and its local jurisdictions, and such an account is, manifestly, impossible under the circumstances.

Nor is it necessary or pertinent to emphasize to this audience—so well informed as to what is being done in European countries and some of our States—the need of legislation in every enlightened commonwealth for safeguarding, coordinating, and publishing the historical, economical, sociological, and legal sources under State supervision. We have time merely to trip lightly over this vast subject—to point out instances as examples and to characterize conditions that too generally prevail, to the great regret of scholars and the great shame of the State.

In the treatment of archives there is a triune function—preservation, coordination, and publication. In other words, first preserve the records against theft, fire, damp, or wanton destruction; second, when preserved properly in each department of every city, town, village, and hamlet, and in the State by the State departments, the next step is coordination or a proper scientific classification, together with indexes as media for ready accessibility; the third stage follows naturally, because when they are properly preserved and classified, the publication is easy for an expert. This consummation so devoutly to be wished does not prevail in the State of New York; in fact, we lag far behind the activities in the principal European Governments and the conditions in quite a number of the United States. Yet, New York is called the "Empire State," and our State arms bear the motto "Excelsior." But there is an awakening among the students of history in this State, growing out of a world-wide movement, which will bear fruitage and make for the proper administration of public archives throughout the State and under the official direction of the State.

The conscience of public officials is too often blunt in relation to inactive materials under their charge, because they look too generally upon their records from the standpoint of immediate practical use in administration. The reason why so much has been lost and is now being neglected or destroyed is that there is a natural tendency of men to neglect or destroy such things as are not useful to themselves, or which for the moment seem to have passed their usefulness. For this reason every enlightened government owes it to itself and posterity to enact proper laws for controlling the situation, and should intrust the prosecution of the task to some one who has the instinct, sympathy, conscience, and ability to grapple with it. Time was when the British national records were as disgracefully administered as are some of ours. But, says Hubert Hall:

> At length the day came when the Government ceased to haggle over the refitting of the lofts and cellars, the tanks and stables, which had become the last refuge of the greatest national treasures possessed by any country in the world. What was left of our national Archives was transferred to a central repository, and we began to count our losses.[1]

Not only were heavy losses detected, after centuries of neglect, in the national archives, but it was found that the local records had been pillaged by enterprising antiquaries, and that much of the official correspondence of the nation had been carried off by successive ministers to their own estates. More than half a century ago the British conscience found a corrective for these abuses. The conditions which Hall portrays have found their counterpart in our own national and State archives; only, many of us have not yet discovered or applied the corrective for preventing these abuses.

It is true that the State of New York has not been wholly derelict toward the State records. But action has been spasmodic and unscientific—it has not been progressive and successive; it has not been systematic; it has been lacking in perspective. For the local records this much can not be said—they are yet in penumbra; but the local records are also the State's title deeds.

J. V. N. Yates, as secretary of state of New York, made a report to the legislature, in January, 1820, relative to the records, etc., in his office.[2] This was in obedience to two concurrent resolutions of the preceding session of the legislature, which directed, among other things, that certain regulations and improvements be adopted in the office of the secretary of state "for the better preservation and security of the public records." The second concurrent resolution—

> was directed principally to the preservation and arrangement of such of the records as concerned the claims and titles of this State, and of individuals, to

[1] Hubert Hall. Studies in English Official Historical Documents. Cambridge, 1908, p. 7.

[2] No. 2. In Senate, January 5, 1820. Report of the Secretary of State [etc.], information from pp. 1–3, 32–39.

lands to the value of many millions of dollars. Of this description were the books of grants or patents, of deeds and of mortgages, the field books and maps. Many of these books were rapidly decaying, the binding mutilated and worn, the leaves loose, and some of the Indices imperfect and incomplete. Most of the field books were in pamphlet form, without binding, and exposed from that circumstance alone to injury or loss. The maps had suffered much by lapse of time; and by frequent reference and use many of them were torn, and almost all of them required to be cleansed, repaired, and mounted.

He continues:

As the value and importance of the records in this department forbade the idea of any removal, which might expose them to fraud, piracy, or accident, it became necessary that the bookbinders and workmen employed should conduct their labors in the record-room in this office, under the immediate personal inspection of the Secretary and of his deputy, and under an oath well and faithfully to discharge the trust reposed in them.

Accordingly, skillful bookbinders were engaged. Some of the books were bound, others rebound, others again merely repaired and lettered, and several were permitted to remain in the state in which they were originally found. The field books were reduced, in binding, to a comparatively small number; the maps were cleansed, repaired, numbered, and mounted, and put into portfolios. The books of patents, deeds, and mortgages, and the field books were bound substantially; indexes were examined and corrected; engrossed colonial and State laws, formerly in packets, were bound up in volumes; general alphabetical indexes were made to all the patents, deeds, field books, and maps in the office, and new boxes and cabinets were provided. Mr. Yates's report was accompanied by a short-title catalogue or inventory of all of the records under his jurisdiction, and he also supplied an appendix in which he gave information about lost records, and of his endeavors to trace some of them in Massachusetts and Connecticut. He said: "Several important and much-to-be regretted piracies have been committed, and probably at a very early period, on the records in this office." He found gaps in the series of grants and patents under the Dutch government, in the proceedings of the director general and council during the Dutch régime and in their letter books, etc. He found a description of patents, orders, etc., that Sir Edmund Andros had "taken away for very improper and reprehensible purposes." Some of them found their way back to New York, but others, as he believed, were destroyed by the direction of Andros.

On March 18, 1741, a fire occurred "in the roof of His Majesty's house at Fort George, near the chapel, consuming the house, the chapel, and some other buildings adjacent. Most of the public records in the secretary's office were fortunately rescued from the flames." It is evident that some were lost; but no account of the extent of the disaster has been noted.

Yates traces the history of the removal and loss of records during the American Revolution, involving the transfer of some to the British ships *Dutchess of Gordon* and *Warwick*, and the seizure of others by a military force of the patriots. Samuel Bayard, jr., as secretary, reported to the British governor, James Robertson, on April 9, 1788, with reference to records in the possession of the British, as follows:

> That the books when received were in very bad condition, many of them much mildewed and greatly injured, in the binding particularly, owing, as I apprehend, to their having been a long time on shipboard and exposed to great damps, but as far as I have discovered, the writing is yet legible or in very few places defaced. I have used my best endeavors to preserve them, having frequently exposed them to the sun and air, and several times had them brushed through every leaf.

The records in British hands were delivered over to the secretary of state soon after the British evacuation of New York City and were kept in that city until 1793, when they were removed to the city of Albany, the new seat of government.

The first Legislature of the State of New York exhibited an intelligent interest in State and local records. On March 23, 1778, the senate passed a resolution, in which the assembly concurred the next day, as follows:

> That the Secretary of this State and the Clerks of the several Counties in the same be respectively authorized to put, or cause to be put, the Records and Papers belonging to their respective Offices into strong and light Inclosures sufficient to exclude Rain, and to keep or cause them to be kept, and from Time to Time to be removed in the same, respectively, to such Place and Places, as they shall severally think most conducive to the Security of such Records and Papers, respectively.

This concurrent resolution also made provision for military guards to protect the records, and the senate said it would concur with the house in passing a special law in case it should "be necessary to justify the carrying of this Resolution into Execution."[1]

In 1817 one William Teller mutilated two volumes of deeds by tearing out several leaves and substituting fraudulent conveyances in their stead. He was sentenced to life imprisonment in 1819. This is not the only instance of piracy and fraud to which the records have been subjected. Only this year the office of the district attorney of New York County reported as to an investigation of conditions in the special sessions and charged that bills were padded and false entries were made of vouchers.

By chapter 120 of the laws of 1881, entitled "An act concerning certain records in the office of the secretary of state and of the comptroller," certain records, documents, and files were transferred

[1] Senate Votes and Proceedings. Fish-Kill: Samuel Loudon, 1777, p. 92; Assembly Votes and Proceedings. Kingston: John Holt, 1777, p. 90.

to the custody of the New York State Library, and this act was amended by chapter 274 of the laws of 1907, by which more manuscript materials were transferred to the same jurisdiction. It follows, however, that sets of records are yet separated, and the same is true of records that are intimately related. The idea of centralization is embryonic only. It is questionable whether this wholesale transfer of records to the State library has been a godsend. For years they have been crowded into one of the most inadequate rooms of the capitol, with only one crescent window swinging on a pivot as the sole avenue of natural light and air, and subject to heat and stuffiness. All the while these priceless records have been in this tomb the printed books and pamphlets of the library have been nursed by a decimal classification and all the other paraphernalia of modern library economy, and printed genealogies dwell in the sumptuous surroundings of a $28,000,000 capitol. It is true, of course, that these State records will be removed in a couple of years to the new State education building, and there is promise that more adequate quarters will be given to them there than had been originally allotted to them in the plans, due, as I have reason to believe, to my campaign on behalf of the public records.

The lost records give rise to serious reflections in us. There are cases in which we must depend wholly upon some printed or contemporary or later transcript, the accuracy of which can no longer be ascertained with certainty, because the original is either lost, mutilated, or decayed from neglect. Too often the key of truth has perished, leaving us only the uncertain premises that are afforded by incompleteness.

In 1901 the public archives commission of the American Historical Association published its first report, and the bulk of it was a "Report on the Archives and Public Records of the State of New York and of New York City," by Dr. Herbert L. Osgood. A pioneer effort under private auspices, it has been awarded the highest praise, and it has served many a forlorn student as a guide. Admittedly, it is far from complete for the State. It says to the State and the divisions thereof: "Here is the way, walk ye in it." This report showed that records were found in frame buildings used for business purposes, such as feed stores, glove factories, barber shops, and furniture stores, and that papers were kept in cellars and mildewed, in wooden cases, in wooden desks, loose in packing boxes, in lofts and garrets, and in sheds with household rubbish. The report declares that in two towns of Onondaga County the masses of stored manuscripts were deliberately burned, because they were considered a useless burden. Yet the records are the property of the people, and as such are legally and theoretically accessible to all. Section 941 of

the Code of Civil Procedure provides for the introduction as evidence of—

> an act, ordinance, resolution, by-law, rule, or proceeding of the common council of a city, or of the board of trustees of an incorporated village, or of a local board of health of a city, town, or incorporated village, or of a board of supervisors, within the State . . . either from a copy thereof, certified by the city clerk, village clerk, clerk of the common council, clerk or secretary of the local board of health, or clerk of the board of supervisors; or from a volume printed by authority of the common council of the city, or the board of trustees of the village, or the local board of health of the city, town, or village, or the board of supervisors.[1]

All of these provisions are presumptive evidence that these records are supposed to be well preserved and in an accessible manner.

We are cognizant of cases of wanton destruction, of "borrowed" records, of papers lost by theft or through carelessness. A few may be mentioned. A number of the early volumes of New York City Deeds (conveyances, mortgages, etc.) are missing from the register's office. A correspondent of ours was recently informed "that several volumes disappeared during the incumbency of the last register, while the office was at 160 Nassau Street, after the old Hall of Records had been razed and before the new building was ready for occupancy." In the summer of 1908 there was returned to the city of New York a volume of the "Minutes of the Executive Boards of the Burgomasters of New Amsterdam," and notarial records of Walewyn van der Veen, found among the effects of the late Berthold Fernow in the State of Maine. This material was not included in, although a part of, the "Records of New Amsterdam," which he had edited for the city. No doubt, he was permitted to take them away for temporary use, as he furnished translations to private auspices for publication.[2] It is, however, a curious commentary on the carelessness of administration to find that records could be given out and remain out of an office for years until all knowledge or record of them had passed from memory.

About six years ago a bookseller, now of Peekskill, but then of New York City, offered in his catalogue for $500 the following item:

> Rough Minutes of the Board of Common Council, 1809 to 1831, and of the Board of Aldermen, 1831 to 1847. Bound in 61 volumes of varying thickness, nearly folio in form. These are the original manuscript minutes of these two branches of the city government, only a portion of which have ever been printed. It will be observed that the important periods of the War of 1812, and the Mexican War, are covered.

As soon as I saw the item in the catalogue, I recognized that this was, indeed, a body of most valuable official manuscripts, to which my

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[1] Chase: Code of Civil Procedure. New York 1908.

[2] These translations were printed in the second volume of Minutes of the Orphanmasters Court of New Amsterdam. New York, 1907.

attention had been directed several years before, during a visit to the city hall of New York. I at once suggested that the item should be brought to the attention of the Hon. Seth Low, then mayor, which was actually done. Mayor Low turned the case over to his corporation counsel, Mr. George L. Rives, who made the usual inquiries prior to an execution for a replevin. The bookseller, in his next catalogue, doubled the asking price to $1,000, and added these words to his note:

> These were a part of the archives of the city of New York till some one with ample authority sold them to a junk dealer for old paper, and I happening to find them in his possession in process of being packed for the paper mill, they were thus rescued from oblivion. Some interested person called the city officials' attention to the fact that this "rubbish" had value above old paper price, and the "junker" was asked by the city representatives who interviewed him why he "did not know enough to send them to the paper mills and have done with them?" With too little sense to buy them back and place them where they belong and thus cover their ignorance, an attempt has been made to place me in a false position, because I had sufficient intelligence at command to be able to discern gold from Dutch metal. I can give a clear title to these records, and now offer them for sale at just twice the price they were originally advertised at by me.

In February, 1909, a volume of the court records of Dutchess County, from May 18, 1753, to May 1, 1757, comprising 206 folio pages, was sold by a New York auctioneer. I had brought the item to the attention of persons in the county before the sale took place, but the person who represented these interests at the sale was given a limited bid, and the volume was secured by a bookseller. All reasonable efforts by way of persuasion having failed to secure the restoration of this volume by the bookseller, the grand jury has recently been requested to make a formal demand for its return.

In January, 1909, the New York State Library purchased the original minutes of the town of Esperance, Schoharie County, from the erection of the town in 1846 to November 10, 1881. This volume had been secured by a gentleman who makes a business of going around the State to pick up old books and manuscripts. It was one of several rescued by him just as they were to be fed to a bonfire.

The records of the town of Ticonderoga, as a local correspondent informed me, were burned about 1874.

The town records of Norwich, Chenango County, prior to 1803, are missing. The village records of Norwich, from its incorporation in 1816 to 1843, are lost; the village and town records of Oxford, Chenango County, prior to 1842, are lost or destroyed, and this town was formed in 1793.

A lawyer at Rye has just written that volume A of the records of the town of Rye, Westchester County, which was in the town clerk's

office in 1848, when Bolton wrote his history of the county, disappeared subsequently, and could not be found in 1872, when Baird wrote a history of that town. He says:

> It was reported that the book was taken by a person to suppress certain records which would prove adverse to claims that he had set up in some litigation. Nothing was known to a certainty, but the house of this individual has since been destroyed by fire.

He then points out specific disputes over rights and easements which can not be definitely settled, because the grants were all in this lost volume. Another correspondent, of White Plains, in the same county, has given information that the earliest town minutes of White Plains are imperfect, mutilated, frayed, and otherwise in bad shape. He also adds: "Valuable records belonging to the county of Westchester are in the cellar of the courthouse unprotected," and speaks of others that "are in an unclassified shape in the basement of the Carnegie Library, not a fireproof structure."

Almost all of the local records of the town of Manlius, one of the oldest settled towns of Onondaga County, were lost in a conflagration about 1890;[1] all the early records of the town of Marcellus, in the same county, were lost by fire about 1830,[2] and those of the town of Van Buren were in part lost by fire in 1861, and this town deliberately burned up another large mass in 1894.[3] The village records of Onondaga County are kept in the local fire-department houses or lockups, usually of frame construction, and fire has wrought havoc among these records.

Prof. Osgood said of the records of the former town of Bushwick, Long Island, that "no trace has been found, though the opinion is expressed that some of them are still in existence." I learned last spring from a correspondent that they are in the Long Island Historical Society, and extend from 1660 to the American Revolution. Liber 13 of conveyances of New York City (1683 to 1687), and Liber 18 (1687 to 1694) have disappeared since 1900 from the register's office. This act in the tragedy is almost a farce, but I believe the volumes are now in the possession of a historical society, having been secured quite recently. The organization of a "Hall of Records Association" in New York City, by members of the Bar Association, Real Estate Exchange, Board of Trade and Transportation, and others, has brought to fruition the stately new "Hall of Records" in this city. Just a year ago there was considerable agitation on the part of the Bar Association of the city of New York in relation to the delay in centralizing the scattered records in the new building. A few years ago truck loads of the mayor's records were taken out of a dungeon in the City Hall and sent to the Lenox

[1] Osgood's Report, p. 154. [2] Ibid., p. 155. [3] Ibid., p. 159.

Library Building for sorting and elimination. They were about as filthy a jumble as the eye ever rested on; yet, they represent the most valuable materials of the city's administration for about half a century. Among this miscellaneous jumble was easily found, after classification, what is, perhaps, the most important document attesting the city's rights in the so-called "Eleventh Avenue Tracks" case—a matter that has been agitating the people and the legislature for years. The original records of the town of Harlem were secured by a title company of New York City and transferred to a second party so as to avoid inquirers. Few local records in the State would have as great value to litigants and as great interest to historians as these; yet, they are held in private ownership and are inaccessible for public or scholarly uses. Quite too many of our official records and historical sources are buried away by the title companies of the State.

Again, recently the county clerk of Niagara County refused or neglected to turn over to his successor mortgage-tax records, and it was only after the State board of tax commissioners threatened him with mandamus proceedings that he finally gave them up. Our informant, who has also pointed out the meagerness of the town records of Hurley, New Paltz, and other places in Ulster County, wrote:

> I have often noticed the carelessness existing in country towns about keeping records. Few town clerks are provided with safes in which to preserve town records. Instead of a town hall the town officers are allowed to keep town records in their own private houses, and very often when they go out of office they neglect or refuse to turn over these records to their successors. I have known of instances [he says] where newly elected officers have had to make repeated demands upon their predecessors in office to obtain town records. If you can create a sentiment among the people that will properly safeguard local records, rich in historical association, you will do something the whole State will some day thank you most heartily for.

Now, I am happy to report to this conference of archivists that the promotion of this line of work has been uppermost in my mind from the day that I entered upon the office of State historian of New York. I immediately began to draft a bill for amending the law relating to the powers and duties of the State historian, and this bill added provisions with reference to the public records throughout the State. The history of the inception, progress, and failure of this legislation has been written and will be printed in the next volume of Proceedings of the New York State Historical Association.[1] This bill was antagonized by the commissioner of education, who demanded a hearing, which was granted. The bill was amended and passed the assembly with only one dissenting vote. In addition to the provi-

[1] This address on "The Executive Relation of New York State to Historical Scholarship" has since been printed in Proceedings of New York State Historical Association, vol. IX, (1910), pp. 199 ff.

sions for reorganizing the office, two sections relative to records were in the bill as passed in assembly, viz:

SEC. 92. The State historian may communicate with State and local officers of this State who are entrusted by law with the care or custody of any books, records, documents, or materials of historic value, for the purpose of ascertaining the character and condition of such materials of historic value. He may visit any public office in the State, and shall have access at all reasonable times to any such materials as may be therein; and he is authorized to index, calendar, or have photographed any such materials, subject to such arrangements as may be made with the approval of the said State and local officers.

SEC. 93. No State or local officer shall destroy, sell, or otherwise dispose of any records, original or copied, or of any archives in his care or custody or under his control, and which are no longer in current use, without first having advised the State historian of their nature.

This bill never got out of the senate committee to which it had been referred. Instead thereof a complete substitution was made of a bill which had as its sole object the abolition of the State historian as an independent executive in the administrative government and his subordination under the commissioner of education. Every provision as to public records, methods of publication, etc., was gone. The assembly defeated this substitute by 68 to 25 votes when returned for concurrence in the so-called amendments. The defeat of our original measure in behalf of the public records—mute witnesses of our past history and our present prosperity—may be characterized as the severest tragical blow to New York's public records.

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